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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 August 1998, at 3 p.m.

Chairman: Mr. GUISSÉ

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GE.98-13602 (E)

The meeting was called to order at 3.05 p.m.

ORGANIZATION OF WORK:

(c) METHODS OF WORK OF THE SUB-COMMISSION (agenda item 1(c)) (continued) (E/CN.4/Sub.2/1887/3 and 28; HR/NONE/98/144)

1. The CHAIRMAN welcomed the Bureau of the Commission on Human Rights and invited the Chairman of the Commission to address the Sub-Commission.

2. Mr. SELEBI (South Africa), Chairman of the Commission on Human Rights, said he hoped that the Commission and Sub-Commission could work together to fulfil the Sub-Commission's important mandate in line with the guidance offered by the Commission in its resolutions 1997/22 ard 1998/28. In particular, the Sub-Commission should focus on issues where it could make a distinctive contribution to the Commission's work and avoid duplication.

3. The Commission welcomed the restructuring of the Sub-Commission's agenda and its decisions to limit the initiation of new studies and to achieve a compilation of the existing rules of procedure and procedural questions to be resolved. It also noted with interest the Sub-Commission's continued efforts to avoid duplication of the Commission's work regarding specific country situations. However, it expected more efforts at reform in other areas.

4. The Sub-Commission was central to the Commission's current review of its mechanisms and should contribute thereto by making recommendations for the enhancement of its effectiveness and clearly specifying its unique contribution in the form of working groups, comprehensive studies for the benefit of human rights bodies, especially the treaty bodies, and work on country situations that were not under consideration by the Commission.

5. The public meetings should be used to obtain input from Governments and non-governmental organizations (NGOs) and the closed meetings to seek ways of implementing Commission resolution 1998/28 and to engage in constructive dialogue concerning the drafting of resolutions, a process that should not take place in public. The Sub-Commission's draft programme of work should provide for more closed meetings and fewer public meetings.

6. The Sub-Commission should focus strictly on questions relating to human rights in accordance with its mandate and should avoid adopting resolutions containing unsubstantiated views on matters that went beyond its expertise. Before making a recommendation to the Commission, it should determine whether it had carried out a study on the subject or whether the resolution was related to the launching of a study or working paper. The Sub-Commission's credibility was not enhanced when it transmitted casual opinions based on inadequate deliberations and expertise, e.g. on scientific and technological developments.

7. New studies should not be recommended unless they met the needs of the Commission, treaty-monitoring bodies and working groups, and focused on core human rights issues. The Commission had accepted only one of the five study proposals submitted by the Sub-Commission following its previous session. Study selection should be based on the criteria developed at the session and

not on the narrower interests of individual experts. As the Commission was overloaded with standard-setting exercises, the Sub-Commission should be wary of proposing new projects unless the Commission had indicated that new standards were required. It should also be hesitant about launching studies that would require the creation of additional thematic procedures, because the Commission was already barely able to cope with the existing procedures. Sub-Commission studies should, therefore, seek new ways of implementing and interpreting established human rights norms.

8. The Sub-Commission should continue to develop a partnership with NGOs in which each side contributed its expertise. On certain matters, NGOs should make public statements before the Sub-Commission but, on others, they might find a more receptive audience in the context of informal discussions with rapporteurs, authors of working papers, chairpersons of working groups and other members.

9. Commission resolution 1998/28 encouraged the Sub-Commission to adhere strictly to the principles of independence, impartiality and expertise and resolution 1997/22 urged it to improve further its independence and impartiality, particularly in discussions concerning the situation in a specific country. The chairpersons of treaty bodies recommended that the members of treaty bodies should refrain from participating in the consideration of reports, communications or inquiries concerning States of which they were nationals so as to maintain the highest standards of impartiality in both substance and appearance. He was pleased to hear that the Sub-Commission had begun to adopt the same approach, at least in public discussions.

10. The changes suggested by the Commission would help to identify the Sub-Commission's strong points and further streamline its work. He trusted that the Sub-Commission would demonstrate, on its fiftieth anniversary, that it could still make a unique and significant contribution to the protection and promotion of human rights.

11. The CHAIRMAN said that the points made by the Chairman of the Commission would be duly taken into account by the Sub-Commission.

12. Mr. BENGOA said that, although a great deal of attention was being given to reform throughout the United Nations human rights system, the overall trend of the reforms and their ultimate goal were as yet unclear. The underlying principles were sometimes inconsistent. One trend was bureaucratic and sought to curtail activities for budgetary motives. A second trend was related to dissatisfaction at the way in which certain States were treated by human rights bodies. There were proposals that plainly emanated from parties which wanted country situations to be deleted from the agenda in favour of thematic issues. There was also, however, a trend towards more vigorous protection of human rights and he was very much in favour of seeking reform along those lines.

13. The key issue was how to open up the United Nations human rights system to broader participation by all interested parties at the national and international levels, in other words how to make it more representative. At

the highest level of the United Nations system, responsibility for decision-making lay exclusively with States and, in the Security Council, with a small number of States only.

14. At lower levels, however, ways of enhancing participation and representation could be sought. For example, to ensure greater independence of the experts serving on the Sub-Commission, nominations should be invited not only from States but also from NGOs and other similar bodies. Local and national NGOs that were not recognized by the Economic and Social Council should be given the opportunity to participate in the Sub-Commission's working groups. The same applied to treaty-monitoring bodies. In the absence of dialogue with national NGOs, State party reports were submitted in accordance with a bureaucratic procedure and had no major country-level impact on the enjoyment of human rights.

15. Mr. SELEBI (South Africa), Chairman of the Commission, said that the Bureau of the Commission understood that the purpose of the current meeting was to promote a dialogue with Governments and NGOs that would be followed by more focused discussions at the meetings arranged with the two groups. The Bureau had already held a closed meeting with the members of the Sub-Commission. He had been looking forward to a free exchange of views.

16. The review of the Commission's mechanisms was not motivated by financial concerns but was designed to make the mechanisms more effective. No structure or mechanism was under attack. Inefficiency was the sole target.

17. Ms. BU FIGUEROA (Observer for Honduras), speaking also on behalf of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Nicaragua and Panama, stressed the need for punctuality in calling meetings to order and strict compliance with the time limits for statements. The time allotted to NGO statements could be rationalized by encouraging them to make joint statements on issues of common interest.

18. An information meeting for the permanent missions should be held with a view to avoiding the unnecessary dispatch of documentation. Commission on Human Rights documents, including reports by special rapporteurs and independent experts, should be distributed in all languages in good time.

19. Commission agenda items, particularly those relating to thematic issues, should be reviewed every two years and themes relating to economic, social and cultural rights should be given greater attention.

20. Consensus resolutions should be promoted through more transparent submission and negotiation procedures, including open consultations. Voting should be speeded up, for instance by installing an electronic voting system.

21. The procedure governed by Economic and Social Council resolution 1503 (XLVIII) should be revised so that only really credible communications were transmitted to the Commission for consideration.

22. Special rapporteurs and independent experts should be present during the discussion of the relevant issues. Each State should supply a list of eligible candidates for such offices so as to ensure a more equitable and broader geographic distribution of appointments.

23. Mr. WU Jianmin (Observer for China) said that the purpose of the proposed reform of the Commission on Human Rights should be clearly specified as the enhancement of its efficiency and further promotion and protection of human rights worldwide and the existing shortcomings of the Commission must be redressed.

24. The tendency for the Commission to overemphasize civil and political rights at the expense of economic, social and political rights and the right to development should be gradually reversed. Since the end of the cold war, the Commission had adopted 614 resolutions, of which only 40 - 6.5 per cent - dealt with economic, social and cultural rights. Of the 35 working groups and special rapporteurs of the Commission, only 4 related to economic, social and cultural rights. Such statistics indicated an intolerable imbalance between the two categories of rights.

25. Secondly, reforms should aim at reducing confrontation and promoting cooperation. Since 1992 the Commission had adopted 86 resolutions on country situations, all of them directed at developing countries. The 17 special rapporteurs also dealt exclusively with developing countries. No country's human rights record was perfect, so it was unfair to single out the developing countries. The right approach would be to highlight the common ground among countries, to engage in dialogue on the basis of equality and to promote cooperation.

26. He noted that the number of staff members dealing with civil and political rights far exceeded those dealing with economic, social and cultural rights and the right to development. Similarly, there was a disproportion in the geographical distribution of human rights personnel. He had no quarrel with those from the developed countries, most of whom were hard-working. It was alarming, however, that so few came from developing countries. It could not be normal that, although China accounted for 23 per cent of the world population, there were hardly any Chinese working in the United Nations human rights mechanisms. Statistics on the number and nationalities of higher-ranking staff should be published, together with the steps that the United Nations planned to take to rectify the disproportion, in the interests of transparency.

27. Mr. SELEBI (South Africa), Chairman of the Commission on Human Rights, said that he was eager to generate a discussion. There was indeed an imbalance between the various categories of rights and he asked the observer for China what measures he suggested to correct it.

28. Mr. WU Jianmin (Observer for China) said that it was a many-sided, deep-rooted problem that could not be solved overnight. Among the more obvious elements were the timing and agenda of meetings, the resources available, the composition of the staff and the whole institutional structure.

The journey would be a long one, but the first step should be taken. There were 3.3 billion people living in poverty. The Commission should not ignore that fact and should attach greater importance to the problems that those people faced.

29. Mr. H.K. SINGH (Observer for India) said that his Government attached great importance to the Sub-Commission's work, which could guide the Commission in seeking constructive solutions to various human rights issues. At the same time, he was glad to note that steps had been taken to reform its agenda and methods of work, with particular success since 1996.

30. The Sub-Commission was more than just a mechanism of the Commission, a term more appropriately applied to the thematic rapporteurs and special procedures established by the Commission. It was therefore arguable that the Sub-Commission's work should not be included at all within the framework of the Commission's review of mechanisms. There was, indeed, a case for the Commission to consider reforming itself.

31. The Commission should perhaps. await the outcome of the Sub-Commission's discussions at its current session before giving some guidance at its fifty-fifth session, taking into account the steps taken by the Sub-Commission to implement Commission resolution 1998/28.

32. The Sub-Commission should further refine its methods of work in order to enhance its relevance, while avoiding duplication with the work of the Commission. Drastic measures, such as eliminating the Sub-Commission altogether or severely curtailing its functions and role, would not serve the cause of human rights. The Sub-Commission should be strengthened, not undermined.

33. Mr. Bengoa had outlined several valuable ideas - which would go some way towards redressing the imbalance referred to by the Observer for China - on effective solutions to current problems and on measures to address new phenomena. In the context of the holistic vision of the Universal Declaration of Human Rights, the Sub-Commission should devote greater attention to economic, social and cultural rights and the right to development. At the same time, it should continue to focus on the rights of vulnerable groups, including indigenous populations.

34. The main strength of the Sub-Commission lay in its think-tank role, particularly on thematic issues. It should therefore review its practice of adopting country resolutions, which was essentially a political act best performed by intergovernmental bodies, and focus rather on promoting dialogue and cooperation, and identifying constructive solutions to the world's human rights problems.

35. Mr. Man-Soon CHANG (Observer for the Republic of Korea), speaking on behalf of the Asian Group, said that the Group had submitted a joint paper in response to the request for recommendations on the review of mechanisms. The views in the paper had been formulated in the course of a series of intensive consultations among all its members and should be given due weight.

36. Although the mechanisms of the Commission, such as the Sub-Commission and the special procedures, had contributed to the protection of human rights over the decades, they had proliferated in an unsystematic manner. The review gave an opportunity to enhance the efficiency of the human rights system as a whole. The scope of the review was vague, but the Asian Group would prefer to begin by focusing on specific issues, as part of the overall rationalization process of the Commission's work, and more particularly on the special procedures. There should then follow a comprehensive review of the work of the Commission itself and of the Third Committee of the General Assembly. A broader review risked being superficial.

37. Among the priorities identified by the Asian Group were the enhancement of constructive dialogue and cooperation between the mechanisms of the Commission and States, rather than the confrontational approach that had sometimes been adopted, and a real reduction in politicization and selectivity. Due regard should also be paid to the social and cultural particularities of each society. The universality and interdependence of human rights should be recognized. Lastly, the Group attached importance to a balanced allocation of resources for economic, social and cultural rights, the right to development and technical cooperation programmes.

38. Mr. SUNGAR (Observer for Turkey) said that the United Nations human rights mechanisms had become victims both of their own sophistication and of manipulation by Member States. Their workings would be improved by greater transparency: given that they were based on dialogue and cooperation among States, the revision, too, should be based on the cooperation of all States on a continuous basis, in a framework of open-ended informal consultations.

39. The necessary conditions should also be created to achieve international cooperation on thematic matters, particularly with regard to international terrorism, contemporary forms of racism and xenophobia and the rights of migrant workers, work on which had been bedevilled by the North-South confrontation.

40. Debates and decisions on the human rights situations in a number of countries had not yielded any positive results and, indeed, that further deepened the prevailing tension between developing countries and the developed world, since the former were constantly criticized whereas the latter was hardly criticized at all. Moreover, attacks on a particular culture or religion seemed to be increasing, causing the developing countries to lose their faith in the credibility of the mechanisms. The agenda items on country situations should therefore be reconsidered. A more constructive approach would be to sustain a dialogue with countries in which gross human rights violations were observed.

41. The procedure governed by Council resolution 1503 (XLVIII) should also be addressed. Countries to which the procedure was applied normally viewed complaints as unfounded and politically motivated. It was almost impossible to verify the facts or even, sometimes, to identify the person or organization bringing the complaint. New rules of conduct should be introduced for special rapporteurs, encouraging them to refrain from adopting political approaches and to respect the domestic and constitutional order of the countries with which they were dealing.

42. Rules governing the participation of NGOs in the United Nations human rights system should also be thoroughly reviewed. While appreciating the contribution made by NGOs, his Government believed that the current system, whereby a member of an accredited NGO could participate fully in public meetings or engage in lobbying, was open to abuse: there was no safeguard, for example, against extremist elements who, operating as members of NGOs, had no respect for the principles of the Charter of the United Nations.

43. Lastly, the economic and social dimensions of the human rights system should be strengthened and greater effort should be put into reaching a consensus on the right to development, with a view to incorporating the concept into the human rights system.

44. Mr. STROHAL (Observer for Austria), speaking on behalf of the European Union, said that the Union had long had the objective of enhancing the effectiveness of the Commission's mechanisms. To that end, it had submitted a number of ideas in writing to the Secretariat. The broadest possible input should be ensured, from NGOs as well as Governments.

45. For the system to be effective, the holders of mandates of the special procedures should be independent experts of high moral standing. States had the obligation to respect their independence and impartiality. Special procedures also needed sufficient support and resources, from the regular budget of the United Nations, to be effective. Coordination was crucial; joint missions and the exchange of information should therefore be further developed. Another key issue was the systematic, effective and prompt follow-up to recommendations from the various mechanisms.

46. Many of the mechanisms had been initiated within the Sub-Commission. Important though its role had been over the years, it had an urgent need for adaptation to current circumstances. In particular, it should focus on its core functions and not duplicate the work of the Commission. The Union looked forward to constructive discussions at the various stages of the review process.

47. Ms. GUILLET (International Federation of Human Rights Leagues) said it was regrettable that the important meeting between the Sub-Commission and the Bureau of the Commission had been a closed one. She hoped that, in the interests of transparency, the gist of it would be made generally accessible.

48. The work of the Sub-Commission was extremely important, even if its independence and effectiveness were increasingly being questioned by both Governments and NGOs. It had been responsible for some of the major advances in increasing protection for victims of violations, not least the establishment of the special procedures. Every year it helped to focus public attention on various countries. It had adopted various thematic procedures. It had reacted quickly to difficult situations by issuing prompt declarations. It had also provided a framework for dialogue between the parties to conflicts, as in the case of Guatemala. Reports by its special rapporteurs had become authoritative texts in the human rights field.

49. Such traditions should be maintained. They were, however, at risk from certain factors, such as the fact that some experts spoke out publicly in

defence of their own countries or on the decision - on the pretext of rationalizing work and encouraging dialogue - not to consider the human rights situation in some countries. Her organization suggested that the members of the Sub-Commission should not take part in debates on their own countries. The experts would thus have an objective guarantee of independence from their Governments and such an approach would ensure equality among States, only 26 of which, out of over 180, had a national who was a member of the Sub-Commission.

50. It was essential that the Sub-Commission should continue to play its role of alerting the Commission to situations of flagrant, massive and systematic violations of human rights. In that regard, the decision not to duplicate the Commission's work by adopting resolutions on countries under open consideration by the Commission would give the Sub-Commission an opportunity to concentrate on equally serious situations that had not yet been tackled by the Commission.

51. The CHAIRMAN invited the Chairman of the Commission to respond to the points that had been made.

52. Mr. SELEBI (South Africa), Chairman of the Commission on Human Rights, said that the meeting should proceed in accordance with the policy adopted by the Chairman in terms of the way that speakers were to be given the floor. At the end of the meeting, he would express his views on how he would like the following day's meetings to be structured.

53. Mr. KUEHL (Observer for the United States of America) said that the manner in which the weight given to different types of rights had been calculated had exaggerated the perceived imbalance. Such quotas were of little value when some resolutions (such as those on human rights education) dealt with both categories of rights, whereas others (concerning procedural matters, for example) involved neither.

54. In view of the limited capacity of the Office of the Human Rights Commissioner to deal effectively with certain issues, such as toxic waste or extreme poverty, the human rights approach might also be usefully adapted to other parts of the United Nations system.

55. His Government had recently contributed US$ 900,000 for technical cooperation to the Office of the High Commissioner on Human Rights and had pledged another larger sum in the hope that a good proportion of those funds would be used to respond to developing countries' requests for assistance in promoting the rule of law. The reason that developing countries were a prime target of the special procedures was that the rule of law in those countries was less well developed. It was not a question of confrontation, but of cooperation and technical assistance.

56. Although many of the proposals in the informal working paper (HR/NONE/98/144) were consistent with the mandate of the United Nations, namely, the protection and promotion of the rights of individuals, there were other proposals which appeared to be designed to protect countries from "interference" by human rights mechanisms. Confrontation could not be avoided

since human rights were essentially a political issue. It was to be hoped, therefore, that the Bureau of the Commission would keep the human rights of individuals in the forefront during its review.

57. Mr. NDIAYE (Observer for Senegal) said he agreed that any proposals for change must focus on the more effective promotion of the rights of individuals. The main purpose should be prevention rather than condemnation, for such was the spirit of the procedure governed by Council resolution 1503 (XLVIII). The Sub-Commission's major contribution involved the preparation of thematic studies and the consideration of ways of enhancing the mechanisms. Far from refraining from studying country situations, the Sub-Commission should strengthen its role in that regard. Its deliberations under agenda item 2 should focus on serious lacunae in human rights.

58. States always had certain interests to protect, whatever their avowed willingness to further human rights. Politicization was thus more understandable in an intergovernmental body, such as the Commission on Human Rights, than in a body of independent experts. The credibility of the Sub-Commission had been considerably weakened in recent years by excessive politicization of the debates on country situations and the political motivations of certain draft resolutions had raised doubt as to the independence and integrity of the experts, who were subject to pressures from both countries and NGOs.

59. The independence of the Sub-Commission must be strengthened still further. Although voting had been made secret, the real independence of experts remained in question, since they were still obliged to pronounce themselves publicly before the decisions were taken. All consideration of country situations should thus be held in private.

60. One idea for making the work of the Commission more effective was to transfer the onus of the procedure governed by Council resolution 1503 (XLVIII) to the Sub-Commission, as the consultative body of the Commission. Situations could then be examined by the Commission only in cases where countries refused to cooperate, or where the situation had become particularly serious.

61. There must be a focus at the institutional level on the indivisibility of human rights. Any proposal for change must, however, take into account the fragility of the architecture of human rights mechanisms. If one aspect were touched, others would also require reappraisal.

62. Mr. van RIJSSEN (Observer for the Netherlands) said that if there was to be a successful and substantive review of the mechanisms of the Commission, the scope of the debate would need to be narrowed. A number of issues were beyond the remit of the Sub-Commission and could be more appropriately addressed by other organs such as the Economic and Social Council or the General Assembly. Cooperation between the various bodies was vital if the imbalance between the different rights was to be corrected.

63. One reason for the perceived imbalance might be that civil and political rights were discussed only within the mechanisms of the Commission, whereas aspects of economic, social and cultural rights were addressed elsewhere in

the system; the World Health Organization (WHO) was dealing with the right to health, for example, while the right to negotiate contracts was covered by the International Labour Organization. Both those programmes had the financial and moral support of the Netherlands. A comparison of the funding allocated throughout the system to the different rights might provide a somewhat different picture.

64. Ms. PETTER (Observer for Switzerland) said that the members of the Sub-Commission should be barred from discussing the situation in their own countries; the initiative for inviting special rapporteurs should rest with the countries concerned and countries not extending invitations should provide explanations; the reports of the special rapporteurs should be made available two weeks before the beginning of the session in time for discussion by the Sub-Commission; and no United Nations body should be allowed to make changes to the reports of the special procedures, which were the responsibility of the special rapporteurs themselves.

65. Mr. ZAHRAN (Observer for Egypt) said that the reform process must not be rushed. A major priority was to reform the mechanisms, a technical matter rather than a legal one, which should not be politicized. Visits by special rapporteurs should not be binding on States, nor should they focus on uncovering negative aspects; rather, special rapporteurs should act in favour of the country concerned and should seek out positive aspects in a spirit of encouragement and dialogue. Such visits should not duplicate the reports submitted to United Nations bodies.

66. The promotion of human rights was a fundamental task of the United Nations and as such should be financed from the regular budget. The High Commissioner for Human Rights should also implement a practical plan to ensure a balance between "individual" and "collective" rights. The right to development must also be emphasized.

67. Practical methods should be stressed in the fight against poverty and famine. There must also be action to accelerate the elimination of weapons of mass destruction, particularly nuclear weapons. NGOs must not usurp the role of Governments, although their participation should be encouraged, with a view to achieving complementarity of roles.

68. Mr. AKRAM (Observer for Pakistan) said that history would note the important contribution made by the Sub-Commission to standard-setting. The experts had always made a valuable contribution by preparing thematic studies; priority issues for further attention must, however, be identified. The suggestion that attention should be focused on the right to development was too simplistic. Important issues affecting equity, social justice and the collective and individual treatment of human beings throughout the world also deserved expert attention, including globalization and the marginalization of entire countries and continents.

69. No hard and fast rule could be drawn regarding country situations; the call to avoid duplication of the Commission's work was, once again, too simplistic. The Sub-Commission should perhaps focus on urgent or emergency

situations. There must certainly be a fair and systematic approach to the selection of those issues which would benefit from expert study and it did seem strange that there should be such a lopsided emphasis on developing countries.

70. The procedure governed by Council resolution 1503 (XLVIII) might be simplified if the Working Group on Communications were to meet twice a year, the first session to weed out those communications that did not reveal a consistent pattern of human rights violations and the second to focus on the more serious issues that required a dialogue.

71. The issue of government sponsorship of certain NGOs must be addressed honestly and urgently, so as to prevent the cancer from spreading and undermining the contributions of dedicated actors in the human rights field.

72. The value of the contribution of the expert members of the Sub-Commission was undeniable. In order to take account, however, of the increased membership of the United Nations, and to widen the sense of country participation in the Sub-Commission, the alternates might, perhaps, be appointed from the same region but not necessarily from the same country. Such a membership would also widen the scope of contributions.

73. Mr. HOYNCK (Observer for Germany) said that the first exchange of views with the Sub-Commission had provided a good start to the process of consultation, whose results would be essential to the future role of the Commission and its mechanism and to the work of the High Commissioner for Human Rights. It was nevertheless important to bear in mind what could be achieved and not to become obsessed with the consultation process: consultations should concentrate on areas where progress seemed possible within a realistic time-frame.

74. The scope and number of proposals contained in the informal working paper (HR/NONE/98/144) prepared by the Secretariat reflected the challenging task ahead. There were two matters he wished to single out: the balance between the various elements of human rights and the Sub-Commission itself. Germany had always highlighted the importance of economic, social and cultural rights, but it was important to underline that all human rights were important, and none should be promoted at the expense of others.

75. His delegation had been the main sponsor of the resolution on the work of the Sub-Commission for many years, and was therefore particularly interested in that section of the informal working paper. The objective was clearly reflected in paragraph 116 of that paper, namely, that the Sub-Commission should focus on its original role as a "think-tank" for the Commission.

76. It was also important that practical, rather than theoretical, papers be prepared by experts who understood the environment in which human rights had to be realized. The more practical the papers were, the easier it would be to feed them into the Commission and to help in the promotion of human rights.

77. The main task of the Sub-Commission would be selecting topics for studies. It was important to regard the consultation process as being aimed at clearing the air, so that agreement could be reached on a framework for the further work of the Sub-Commission.

78. Ms. RISHMAWI (Chairperson of the fifth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and the advisory services programme of the Commission on Human Rights), reporting on the meeting, the results of which were contained in a note by the United Nations High Commissioner for Human Rights (E/CN.4/1999/3 and Add.1), said that a useful exchange of views had been held between the Bureau of the Commission and the representatives of the regional groups on the one hand and the special rapporteurs and experts on the other. There had also been a useful discussion with representatives of NGOs and with the internal task force appointed by the High Commissioner for Human Rights.

79. It had been agreed that those discussions should be continued and repeated at future annual meetings. A number of clusters of issues had been discussed: they included the need to improve cooperation with Member States; the follow-up to the recommendations of special rapporteurs; and improved support for special rapporteurs from the Secretariat at all levels.

80. The meeting had expressed concern regarding a serious lack of cooperation on the part of Member States, particularly with regard to approving requests for country visits. Such visits, however, were only the beginning of a process. There should be a follow-up in the resolutions of the Commission, and there was clearly a need for follow-up actions to implement the conclusions and recommendations of the special rapporteurs following their visits.

81. There was also a role for the High Commissioner in the follow-up process in her bilateral and public actions. One useful proposal was that she should publish an annual report consisting of the conclusions and recommendations of the country and thematic rapporteurs. The special rapporteurs had also agreed that the conclusions and recommendations contained in their reports should be transmitted to other relevant United Nations agencies or bodies, and to the regional human rights organizations. It was also emphasized that there should be a better flow of information between the rapporteurs and the treaty bodies. Timely placement of those reports on the Website of the Office of the High Commissioner would facilitate that task.

82. As for Secretariat support, it was felt that the efficiency of the special rapporteurs depended on the efficiency of the staff and, in that respect, concern was expressed regarding the timely submission of reports, particularly the fact that most reports were published only on the day that they were presented to the Commission. Such action not only hampered the work of the special rapporteurs but also was unfair to the Government concerned and to all who had participated in the Commission's work. The financial resources allocated to the mandates of the special rapporteurs were insufficient.

83. The meeting considered that it was essential for the credibility of the human rights mechanisms of the United Nations that the integrity and independence of the institution of special rapporteurs and their immunity be

fully respected. In that regard, concern had been expressed about the attack in Malaysia on the immunity of the Special Rapporteur on the independence of judges and lawyers, a matter which had been referred to the International Court of Justice for an advisory opinion. Concern had also been expressed about the case of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo: it was felt that that case highlighted the growing trend towards undermining the mandates of the experts of the special procedures system. Concern had also been expressed regarding the case of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

84. In that context, an examination was currently being made of the draft United Nations Code of Conduct for Officials other than Secretariat Officials and for Experts on Mission (A/52/488/Add.1). Preliminary consideration indicated that the draft Code contained provisions that could undermine the independence and proper functioning of the persons concerned, and the special rapporteurs believed that they should have been consulted during the drafting process. A letter had been sent to the United Nations Office of Legal Affairs, and a reply received.

85. The special rapporteurs agreed that there was a need for better guidelines for their new colleagues and had been working for more than two years on a manual, which was in the final stages of preparation with comments being collected from the various special rapporteurs. The manual would be ready for formal adoption at the Sixth Meeting and, in the meantime, it had been agreed that the current version could be distributed to new special rapporteurs in its draft form.

86. It was felt that the free flow of information was the key to cooperation with the High Commissioner, and several of her colleagues had expressed the need to be informed and consulted in advance of visits by the High Commissioner, and to be briefed upon her return. There was also a view that the High Commissioner should visit a country that was not cooperating with a country specific rapporteur only after consultations with that special rapporteur.

87. It was also noted that there were areas of overlap between the mandates of special rapporteurs and the human rights mandates assigned to the Secretary-General of the United Nations, and it was thought that there was a need for more systematic discussion between the human rights mechanisms and the relevant desks of the Departments of Political Affairs and of Peacekeeping Operations in New York. A formal understanding regarding cooperation in the field of human rights between the mechanisms and United Nations field operations, including peacekeeping operations, was also desirable.

88. Ms. WISEBERG (Human Rights Internet) said that new information technology could be used to strengthen human rights mechanisms and treaty bodies. Everyone had benefited enormously from the fact that the Office of the High Commissioner for Human Rights had put human rights documentation on-line, but a great deal more needed to be done. The Office must have adequate resources so that it could put documents on the web as soon as they

appeared, for which purpose it needed professional assistance. Secondly, the Website had to become interactive, with submissions from Governments and NGOs going on-line and permitting a broader dissemination of views and a wider debate.

89. In view of the prohibitive cost of travelling to Geneva or New York, many NGOs would find that effective use of the Internet would facilitate their participation in the work of the Commission on Human Rights. A working group of experts might be established to look into that possibility.

90. Thirdly, given the extent to which the electronic sharing of communications could cut costs, it was counterproductive for the United Nations to be charging US$ 1,500 per annum for access to the Optical Disc System: at least for NGOs in consultative status, access should be free of charge.

91. Fourthly, with the projected move to the Palais Wilson, the Office should establish a human rights documentation centre fully based on modern information technology and designed in such a way that it became a place where special rapporteurs and members of treaty bodies could do their research.

92. Fifthly, much more needed to be done to develop the Intra-Net information system used by staff members of the Office in Geneva, New York and the field. It could become a major tool for information sharing and of critical importance as a communications line between field offices and headquarters.

93. Lastly, all special rapporteurs and members of treaty bodies should be electronically connected to the Office and, if they did not have computers and modems, they must be given them and provided with the necessary training to use them.

94. Ms. BYAN (Carter Center and Jacob Blaustein Institute for the Advancement of Human Rights) said that the two institutions she was representing had held a meeting in May 1998 at the Carter Center in Atlanta, Georgia, involving the High Commissioner for Human Rights, several United Nations country and thematic special rapporteurs and representatives, human rights experts from NGOs and representatives of academic and research institutions, to discuss how the work of the United Nations human rights mechanisms could be made more effective. The subject had been tackled by looking at country situations and case studies.

95. One case study - the very important and timely report in 1993 by the Special Rapporteur, Mr. Ndiaye of Senegal, on the situation in Rwanda - had pointed to a pattern of genocidal killings which had begun to take place, and had warned the international community that if no action were taken there would be serious consequences and the killings would increase. Mr. Ndiaye had offered some modest proposals and recommendations which, if action had been taken, might have prevented one of the greatest human tragedies of the century.

96. There had been a number of attempts in recent months to assign blame for the failure of the international community, but Mr. Ndiaye's report was an undoubted success. The problem was, however, that it had not been widely circulated, and many senior United Nations officials had not even known until recently that it existed.

97. In balancing the different types of monitoring, it would be very dangerous if the type of fact-finding demonstrated in Mr. Ndiaye's report were put in jeopardy. It must be continued and strengthened. It should certainly not be weakened by any attempts to inject quotas for different types of rights.

98. Turning to the question of resources, she said that Mr. Ndiaye's mission had cost approximately US$ 20,000, a very small sum compared to other United Nations missions of similar gravity. Mr. Ndiaye had had no research assistants and had taken time away from his private law practice to do his job. The funding of the work of special rapporteurs should, ideally, come from the regular budget of the United Nations, but until that funding could be reliably assured, alternative ways of securing funds should be sought through philanthropic and other channels.

99. Mr. SELEBI (South Africa), Chairman of the Commission on Human Rights, said he hoped that, during the consultations which the Bureau of the Commission would be holding with Member States the following day and NGOs the day after that, the discussions, guided by the informal working paper (HR/NONE/98/144) prepared by the Secretariat, would begin with proposals of a general nature and then deal with special procedures, working groups, the Sub-Commission, the procedure governed by Council resolution 1503 (XLVIII), NGOs and documentation. He hoped that the discussions would be genuinely interactive and used as an opportunity to exchange ideas rather than to state positions. He also hoped that the participants would speak freely.

The meeting rose at 5.55 p.m.

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 August 1998, at 10 a.m.

Chairman: Mr. GUISSÉ

later: Mr. FAN Guoxiang

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GE.98-13617 (E)

The meeting was called to order at 10.10 a.m.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) XENOPHOBIA

(agenda item 3) (E/CN.4/Sub.2/1998/4 and 5)

1. Mrs. CHAMARTIN (International Labour Office) said that, as indicated in its Memorandum (E/CN.4/Sub.2/1998/21), ILO had, since its creation, been concerned with the protection of migrant workers. Its legal instruments on the subject included the Migration for Employment Convention (No. 97) and the Migrant Workers Convention (No. 143), which had unfortunately been ratified by only 41 and 18 countries respectively. In its efforts to solve the problem of ratifications which was particularly acute in the case of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO was making a general survey with a view, inter alia, to the possible revision of the instruments in question. In addition to the technical cooperation and advisory services currently provided by ILO in the field of migration, the conclusions reached as a result of an interregional project entitled Combating discrimination against (im)migrant workers and ethnic minorities in the world of work, launched in 1993, would be examined in October 1998 by a tripartite meeting of experts and published in the form of a Manual on achieving equality for migrant and ethnic minority workers. Moreover, in accordance with the recommendations of a Tripartite Meeting on Future ILO Activities in the Field of Migration, adopted by ILO's Governing Body, a database on migrations was being created for the use of Governments and all other interested parties. A limited version should be available on the Internet within a year.

2. ILO had also participated actively in the Inter-Governmental Working Group on Human Rights of Migrants, and had supported the extension of the Group's mandate at the Commission's fifty-fourth session. Nevertheless, given its limited resources, the Working Group ought to avoid duplication of activities already undertaken by United Nations specialized agencies and reputable NGOs. ILO would be prepared, for its part, to contribute to fact-finding missions on the violations of migrant workers' rights in the regions concerned.

3. Mr. KIRKYACHARIAN (Movement Against Racism and for Friendship Among Peoples) said that the two sub-items under discussion, namely, xenophobia and migrant workers, were linked since the victims of xenophobia were generally to be found among migrant populations, and the exploitation of xenophobia for political purposes by the extreme right usually targeted migrant workers and their families. It was therefore clear that even so-called "affirmative action" had only a very limited effect in the face of certain deep-rooted structural inequalities in society. In the United States, for example, African-Americans accounted for 12 per cent of the population, but for 60 per cent of the number of persons on death row. If the racism experienced by migrant workers was to be curbed, States must once again be urged to sign

and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The former French Minister of the Interior, Charles Pasqua, had rightly underlined in that connection that clandestinity benefited only the employers of cheap labour and that, consequently, the situation of persons who were semi-illegal had to be regularized. It was particularly imperative that the developed States which were hosts to migrant workers and profited from their work should sign and ratify that Convention.

4. Among positive developments, he mentioned the establishment in Vienna, at the initiative of the Council of Europe and the European Union (EU), of the Monitoring Centre for Racism and Xenophobia, which should play an important role in arousing public awareness, as was being done in France by the National Advisory Committee on Human Rights. The Treaty of Amsterdam, concluded in the framework of the European Union, was also encouraging since it elevated discrimination issues to the level of basic principles, and therefore made it possible in theory to envisage a joint integration policy, providing that it received the unanimous assent of all EU member States. Unfortunately, in point of fact racial tensions were becoming exacerbated and acts of aggression against immigrants were increasing.

5. Another encouraging development was the European Union's decision to set up a network of anti-racist NGOs. While it was uncertain what results of its decision would be, it was clear that the European Union would have to make a serious effort to tackle the problems posed by the invisible "sixteenth State", consisting of illegal workers, with no common language or defined territory, and characterized by non-citizenship. The solution to the problem, which also arose in other regions of the developed world, must inevitably be sought in equality and in working to achieve equality.

6. Ms. TANAKA (International Movement Against All Forms of Discrimination and Racism) said that, in his interesting working paper on "affirmative action" (E/CN.4/Sub.2/1998/5), Mr. Bossuyt pointed out that the concept implied the need for certain clarifications. In what way did it actually differ from "special measures", the phrase used exclusively by the relevant international human rights instruments? According to the United Kingdom's Commission for Racial Equality, for example, the concept of "positive action" as defined in the Race Relations Act 1976, lacked the breadth of meaning of the expression "affirmative action" used in the United States, which applied not only to racial minorities, but also to women and the handicapped.

7. Whatever its precise meaning, the concept of "affirmative action" had at all times and in all places been subject to criticism, particularly since it was seen as a tool of "reverse discrimination" through quota systems or preferential treatment which could exclude qualified individuals simply because they belonged to the majority group and not to one minority or another. In the United Kingdom the "positive action" provided for by law was simply a series of measures to encourage people from particular racial groups to develop their potential and apply for jobs. It was only in very limited circumstances that membership of a certain racial group was a genuine occupational qualification for a job. A distinction could thus be made between policies that "imposed" quotas and those which set targets. Another criticism which ought to be addressed was that "affirmative action" might

promote not the integration of various disadvantaged groups in society, but rather their segregation by focusing on their racial, ethnic or gender characteristics.

8. The Sub-Commission ought therefore to continue its study of the concept of "affirmative action", within the context of the special measures provided for in international instruments, including the International Convention on the Elimination of Racial Discrimination, the Committee on the Elimination of Racial Discrimination against Women, ILO and other specialized agencies, with a view to making concrete recommendations which could be brought to the attention of the forthcoming World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance.

9. Mrs. OSONA (North South XXI) said that in Chiapas, 20,000 people, driven from their homes and completely powerless, were confronted by 70,000 Mexican Government soldiers who occupied their land and might even wipe them out. Paramilitary groups supported by the Government were also terrorizing the indigenous population, whom they held for ransom or sometimes forcibly recruited. Ubiquitous military road-blocks prevented the inhabitants from going about their normal business, and in addition drought and fires - often started deliberately - prevented the peasants who remained in their villages from growing maize, so that large numbers of people were threatened with famine.

10. The conflict could nevertheless be resolved if the Mexican Government was required to honour its commitments to the indigenous populations under the San Andrés Sacamchen de los Pobres Agreement of 16 February 1996.

11. Ms. RUPPRECHT (International Institute for Peace) said that, since the Second World War, a number of countries had achieved prosperity, to which a significant contribution had been made by migrant workers. Germany, for example, had made extensive use of Turkish labour, although admittedly it had started out with considerable industrial and technical resources. On the other hand certain countries members of the Organization of the Islamic Conference, such as Saudi Arabia and Qatar, which had only oil, had recruited qualified cheap labour from Nepal, the Philippines, Bangladesh and India. Such was the beginning of the harrowing tale of human rights abuses of many migrant workers.

12. Although Turkish workers in Germany had sometimes experienced problems, they had access to redress in that democratic country. But in the oil-rich countries of the Gulf, young Nepalese, Filipina and other girls employed as domestic servants had no redress and no rights in societies where women had always been, and still were, regarded as inferior beings. Young girls from poor Islamic countries such as Bangladesh and Indonesia were treated in the same way. Moreover, the truth emerged only when the victims, their passports confiscated and without a visa, somehow managed to return home, at times deeply traumatized. It was precisely to help such young girls that Nepal had set up a special organization.

13. The situation of male migrant workers was hardly better, since they were deprived of all rights and freedoms in the institutions and companies where they worked. Yet the Sub-Commission had so far never attempted to inquire

into the situation of migrant workers in the oil States of the Gulf. It was time that it set an example by examining the situation in each of these oil-rich countries, which ventured to criticize established democracies, but whose wealth owed much to the poor children of Nepal and Bangladesh.

14. Mr. DESH PAL SINGH (International Institute of Non-Aligned Studies) noted that the growing interdependence of the world made a mix of populations inevitable. Yet, instead of resulting, as it should, in a general improvement of living standards, the mixing was a source of tensions. Nations that prided themselves on being the melting pot of civilizations and declared themselves in favour of the equality of all human beings were today in the forefront of attempts to restrict the free movement of people, giving their essentially economic fears racial overtones by claiming to be overrun by immigrants. Xenophobia was growing at an alarming rate. The nationals of countries seen as "inferior", which increasingly meant people whose skin colour or wallet size were not acceptable, were even being refused tourist visas. The way in which non-whites applying for visas in the embassies of developed countries were treated spoke volumes. The majority of advanced countries had entered reservations to the International Convention on the Elimination of All Forms of Racial Discrimination, although they should have been the very countries to welcome it without reservation. Issues of domestic policy and economics were increasingly taking precedence over human values, even in the richest countries.

15. In many developing countries, discrimination based on caste, creed and colour was rooted in ignorance and reflected secular traditions. Education and economic development enabled such prejudices to be gradually eliminated. However, in the developed countries, with high per capita incomes and almost universal literacy, racial discrimination sprang from their refusal to share prosperity. In those countries, education placed insufficient emphasis on the fact that racial differences did not denote racial superiority or inferiority. Huge investments were not required to remedy the situation. What was needed was merely an acknowledgement by those who saw themselves as champions of human rights that they too had at times been guilty of racial discrimination. The Convention on the Elimination of All Forms of Racial Discrimination would then be more than just another document.

16. Mrs. BERAUN (American Association of Jurists) said that, because of political persecution, but above all for economic reasons due to the neo-liberal policies of the present Peruvian Government, thousands of Peruvians were leaving their country in search of better living conditions. They were to be found throughout Latin America, particularly in Chile, Argentina and Venezuela, working in conditions reminiscent of another century. Her organization also drew attention to the tragic situation of children and adolescents who, having fled from war-torn countries, arrived alone in Germany, were welcomed on humanitarian grounds and studied or worked there until eventually they were sent back to their home countries when they reached the age of majority. She urged the Sub-Commission to call on the German Government to adapt its legislation so as to grant such young people the right of permanent residence in Germany.

17. Although it was common knowledge that an iron curtain had come down along the entire border between the United States and Mexico to prevent the

entry of illegal immigrants into the United States, and that American laws deprived the children of illegal immigrants of social security and schooling, much less well known was the dramatic fate awaiting persons who arrived illegally in the United States and were subject in that country to an expulsion order which, for one reason or another, could not be implemented. Such persons remained indefinitely in detention and had no legal remedy, the Supreme Court of the United States having decided that they had no constitutional rights since they were not in reality in the United States but simply in the hands of the Immigration and Naturalization Service. Such people had no existence at law. Yet they were human beings liable to rebel, and it was not uncommon for them to be tranquillized to prevent them from doing so. The American Association of Jurists therefore requested the Commission's Working Group on Arbitrary Detention to look into the situation of such persons - mostly illegal immigrants - held in United States prisons.

18. Mrs. BIRD BIOUDI (International Confederation of Free Trade Unions - ICFTU) drew the Sub-Commission's attention to the rights of migrant workers, whose numbers had reached unprecedented levels as a result of economic globalization. According to ILO estimates, there were some 42 million legal migrant workers worldwide, and each year some 6 million illegal workers were exploited by criminal organizations which earned some US$ 7 billion from their trafficking. Italy was handling an unrelenting flood of illegal immigrants from North Africa and the Balkans, although Asian and African countries were the principal points of departure for migrants, and most migration took place between the countries of the southern hemisphere. Black Africa alone had more than 40 million migrants, including 6 million refugees. In contrast to the traditional model, women had for some time been migrating to an increasing extent: often employed as domestic workers, they were particularly vulnerable because of their isolation and dependence on their employers.

19. Migrant workers, mostly poorly-qualified or unskilled workers, were being exploited, but at the same time were benefiting both their countries of origin as well as their host countries: the latter benefited from the money they sent home (in El Salvador, Sri Lanka and Bangladesh such transfers had become the main source of income), and the former benefited from the fact that migrant workers made large social security contributions, performed jobs that no national workers would be prepared to do under the same conditions, and contributed to the economy as consumers. Nevertheless, discrimination against them persisted. Foreigners were often used as scapegoats in times of crisis, as had recently happened in Asia.

20. The only way to break the vicious circle of competition among workers, caused by globalization, which led to a deterioration of working conditions and wages, was to promote solidarity between them and ensure compliance with international labour standards. In that connection, ICFTU deplored the fact that only eight countries had so far ratified ILO Convention No. 158 (1990) on the protection of migrant workers and their families. With 207 affiliated unions in 141 countries, ICFTU believed it was time for the unions to become a player in the global economy, so far dominated by the business world. At a time when labour was migrating to meet the demands of potential employers and was considered a mere commodity like any other, the task of the unions was to

campaign against racism and xenophobia, to try to give migrant workers special support, and above all try to restore to them their rights and dignity as human beings.

21. Mr. MARTINEZ (Indian Movement "Tupaj Amaro") drew attention to the plight of migrant workers from certain Latin American countries who sought to emigrate to the United States through Mexico. Such workers who were mostly indigenous, left their countries because they had been unable to find jobs that would enable them to feed their families and travelled to southern Mexico, where they were exploited on coffee, banana and cotton plantations and provided with no medical or social protection whatever. Nevertheless, many of them managed to reach the northern Mexican border, where they joined the thousands of Mexican indigenous workers on their way to the same destination, finding temporary work on the large farms in the northern States under extremely exploitative conditions, with not even minimum services provided by either their employers or the authorities. The "Salvador Alvarado" association of agricultural day labourers and workers in northeastern Mexico had managed to set up a few shelters equipped with a medical service. On reaching the United States border, many of the workers were deprived of the little money they had managed to save by those who helped them cross the border, legally or illegally. Their arrival in the United States, the country which made itself out to be the defender of human rights, was the beginning of a new series of trials, consisting of ill-treatment, racial discrimination, lack of understanding, harassment and exploitation.

22. Indian Movement "Tupaj Amaro" condemned the dam built along the 3,500 km border between Mexico and the United States and the new anti-Mexican migration laws recently examined by the United States Congress. In addition, the neoliberal policies currently being followed by the Latin American countries were leading to a globalization which left no room for the observance of the rights of workers, whose labour was exploited by the more developed countries without the slightest regard for their social welfare needs. Migrant workers, whether indigenous or not, who were the victims of exploitation in the United States and other countries, must be given special attention in government negotiations if they were to be able to assert their rights as human beings.

23. Mr. BEKIROV (Society for Threatened Peoples) referred to the problem of the political representation of minority racial groups in multiracial countries and stressed the need for positive discrimination. The over-representation of certain racial groups in government bodies, while others were under-represented or not represented at all, should be regarded as a very dangerous form of racial discrimination, as it led to decisions favouring the better-represented ethnic groups and even promoted economic, cultural and linguistic discrimination against non-represented or under-represented racial groups. It sometimes seemed that the most severe cases of racial discrimination were those where the minority group dominated the majority group, as in South Africa during apartheid. It was true that democracy meant government by the majority, and that democracy should normally make it possible to eliminate racial discrimination. Yet it was sometimes forgotten that democracy was government by a political majority. In multiracial societies situations frequently arose where the larger racial group repeatedly achieved a political majority. When that happened, some

racial groups were under-represented or not represented in State bodies because the distribution of governing positions was under the complete control of the largest racial group, which refused to share power.

24. To say, as did those Governments that wished to justify their practice of racial discrimination, that the constitution guaranteed all citizens equal political rights and that no one racial group needed to be protected by special legal mechanisms, was nothing but demagogy, as was the argument that a racial minority was well represented simply because a particular leader belonged to it. In a real democracy minority groups should be able to be represented by members of parliament or government independently of pressure from the racial majority. There were examples of larger ethnic groups trying to promote the rights of smaller ones, but unfortunately the more frequent case was the numerically dominant racial group trying to limit the political participation of the others. One example was Kosovo, where the Serbian Government had reduced the political autonomy of Albanians and Muslims to nothing.

25. The most dangerous situation occurred when the victim of discrimination was an entire people, as were the Crimean Tatars. The Ukrainian Government had abolished the quota for indigenous people, and more than 12 per cent of the population of the Crimean Autonomous Republic had lost their representation in the regional parliament. To eliminate protests, the Ukrainian Government had concentrated more than 50,000 armed troops in Crimea, equipped with tanks and helicopters, which constituted a threat to international peace. Mediation by the Organization for Security and Cooperation in Europe had been ineffective, and no one knew how the situation in the region would evolve. The theoretical difficulty of defining circumstances where a racial dictatorship was concealed by formal democratic procedures should not prevent such a system of government from being qualified as a very dangerous form of racial discrimination. The adoption of measures of positive discrimination should be explored to ensure interracial and international peace and cooperation.

26. Mr. WAREHAM (International Association against Torture - IAAT-AICT), also speaking on behalf of the December 12th Movement International Secretariat, said combating apartheid had by consensus been considered to be quite important, because of the blatant racism on which it had been based, but the same was no longer true of the fight against racism. The opposition of certain major Western Powers, in particular the United States of America, to the holding of the World Conference against Racism was an example of the uneasiness created by any attempt to resolve the problem and of the hypocrisy which existed in the human rights arena. The Conference was scheduled for 2001, but much work needed to be done immediately if it was to succeed in developing a programme of action which would decisively attack the issue of racism. He noted that racism was never studied as a separate issue, but in conjunction with other topics, an example being the Commission's appointment of a Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance, in an attempt to weaken the focus on racism and its prime practitioners, the Western countries.

27. Nevertheless, it was clear from recent events that racism was on the rise. In Australia, the ultra-right One Nation Party had the support of 12 per cent of Australians; its leader, Pauline Hanson, was against Asians and Aborigines. The Supreme Court of Canada had recognized that there was widespread racism in the justice system and that racially prejudiced jurors had to be screened out. According to a recent poll in France, two of every five French persons admitted holding racist and xenophobic views in some form. The policy of "national preference" defended by some politicians in their scramble to defeat the National Front, the extreme right-wing party, had been criticized by the Council of Europe's European Commission against Racism and Intolerance, which had concluded that France was rife with racist activities and was not taking all the necessary steps to wipe them out. In Russia, members of the Black, Asian and Muslim communities were subject to attacks by neo-Nazi groups. In the United Kingdom, the attack on a Black university professor who had been living in Scotland for over 30 years had shown that a person's status was of little importance in comparison with his or her colour. The German Constitution prohibited discrimination on racial grounds, but that provision had not been incorporated into law and had little practical application, as illustrated by the case of Noël Martin, a Black worker who had been paralyzed as a result of a racist attack in 1996 and had not yet received compensation from the German authorities. In Austria, the son of a former Gestapo official had received 30 per cent of the vote in a recent election, despite the fact that his ties to former Nazis had been reported on national television. In the United States, the forced underdevelopment of 40 million Black people was overshadowed by the achievements of a few African-Americans, whose success did not protect them from racist incidents and attacks. Camille Cosby, the wife of actor Bill Cosby, whose son was murdered by a Ukrainian immigrant, had written an article condemning institutional racism in the United States. African-Americans were discriminated against in every area, including health, education, and land ownership.

28. Racism was the constant companion of capitalism and there was an obvious connection between increases in racism and periods of economic dislocation. The Sub-Commission had prepared extremely useful studies on income distribution and other economic issues which were indispensable in finding a solution to the problem of racism. AICT therefore proposed that it should undertake a study on the relationship between economic crises and the rise of institutional and individual racism, ensuring that the themes of racism and ethnic prejudice/conflict were addressed as separate issues. The two non-governmental organizations (NGOs) he represented offered their expertise in helping the Sub-Commission ensure the success of the World Conference against Racism.

29. Mr. PARKER (International Educational Development) said that, regrettably, the International Convention on the Protection of Migrant Workers and Members of Their Families had not yet been ratified by the United States, one of the major "user-States" of migrant labour, and especially of Mexican nationals. The failure of the United States to ratify the Convention was partly due to the efforts of certain groups in a campaign using migrants as scapegoats for other national ills. The Sub-Commission should appeal to the United States to combat anti-migrant xenophobia and to ratify the Convention without delay.

30. Another example of xenophobia and racism in the United States was that directed against Arabs and Muslims of all nationalities, which was a fundamental feature of the country's foreign policy, as illustrated by the Government's excessively hostile position towards the people and Government of Iraq. The intense Government campaign against the Iraqis had had a chilling effect on the natural solidarity between international human rights organizations and victims. The sanctions against Iraq also prevented the humanitarian aid organizations from carrying out their work in Iraq. Xenophobia was also used in a campaign directed against Cuba and the Cubans, although increasingly rejected by the American people themselves, including the Cuban Americans who opposed Fidel Castro's regime.

31. She also wished to comment on the anti-Tamil propaganda of the Government of Sri Lanka. There had been suggestions that NGOs were being duped by the Liberation Tigers of Tamil Eelam (LTTE), because they had expressed concern over the targeting of the Tamil civilian population by Sri Lankan forces: disappearances, torture, extrajudicial killings, rape, arbitrary arrests and indefinite detentions, in addition to an embargo on food and essential medicines and the displacement of 850,000 persons. Her organization called upon the Sub-Commission to heed the appeals of the NGOs that were asking the international community to find a solution to that war as it had in other wars.

32. Ms. GIRMA (African Association of Education for Development) referred to the problem of migrant workers and xenophobia, which took the form of peri-urban ghettos in Europe. Peaceful coexistence between multiracial and multicultural communities was under threat from an increase in racism, caused by feelings of fear and insecurity which certain political organizations were exploiting. If immigrants were granted the right to vote in local elections, as the Nordic countries were already doing, political leaders might treat them with more consideration in order to obtain their votes. The marginalization and exclusion of a portion of the population could only hurt the countries hosting immigrants. The multiracial composition of the team which had won the football World Cup was seen by many as a symbol of the fight against racism, xenophobia and exclusion. The Sub-Commission, whose members came from all regions of the world, must do everything in its power to ensure the success of the World Conference against Racism, despite the lack of interest which seemed to prevail.

33. Mr. SYED (Himalayan Research and Cultural Foundation) said that the adoption of the Convention on the Elimination of All Forms of Racial Discrimination had provided the international community with a legal instrument to end racial discrimination. The Convention's objectives had been to review, amend or repeal all laws which perpetuated racial discrimination. In ratifying it, more than three quarters of the Member States of the United Nations had pledged to combat that menace, yet xenophobia remained an important problem and constituted a grave threat to the realization of human rights.

34. New techniques, and in particular religion, were being used to create hatred and divide people. Pakistan was waging an Islamic "Jehad", a holy war, in Jammu and Kashmir, where non-Muslims were the victims of lootings and massacres by armed Muslim groups. Pakistan's objective was to set one

community against another on religious lines, and the authorities took advantage of the poverty of young Muslims from various countries to brainwash them and win them over to the Jehad. That was a convenient way of dealing with the present difficult economic situation. He feared that the holy war currently taking place in Jammu and Kashmir would spread to other parts of the world. The international community, which had pledged to stamp out the menace of xenophobia, could not afford to be a silent witness to such events. His organization called on the Sub-Commission to bring pressure to bear on Pakistan to cease its promotion of xenophobia; the danger to the realization of human rights could not be ignored.

35. Mr. Fan Guoxiang took the Chair.

36. Mr. MERIC (Observer for Turkey) said that, in spite of efforts to increase the awareness of Governments and the international community of racism, racial discrimination and xenophobia, and the special mechanisms established to stem their proliferation, such problems persisted in subtle new forms. The Turkish Government considered racism and racial discrimination in their contemporary forms to be among the most serious violations of human rights. All available means must be used to combat them and, especially, the impunity which sapped confidence in the State's authority and legislation and encouraged the commission of other, similar crimes.

37. His Government was particularly concerned by the situation of migrant workers living in Europe who were the victims of acts of racism and racial discrimination even on the part of public officials. They constituted one of the most vulnerable groups and would remain so until they were given effective special international protection. In that context, his Government was in favour of providing the Working Group of Experts on the Human Rights of Migrants with permanent status.

38. On another matter, certain racist groups were using new communication technologies to disseminate messages of incitement to violence and racial hatred, using ideas based on the superiority of one race. As the Committee on the Elimination of Racial Discrimination had concluded in General Recommendation XV (42), prohibiting such groups from disseminating messages of that kind did not violate freedom of expression. The new technologies should rather be used to combat racist opinions.

39. Another cause for concern was racism in the political field. In Europe and in other regions, some political parties were making increasing use of xenophobic arguments, targeted in particular at migrant workers, to their own political advantage. Care must be taken to prevent that tendency becoming strong enough to provide a basis for making racism a legitimate official doctrine. His Government attached great importance to the mandate of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the World Conference against Racism, the convening of which it had supported and from which it expected concrete results. It welcomed the decision of the Commission on Human Rights to establish a working group to begin preparations for the Conference as early as 1999.

40. Mr. HERNANDEZ (Observer for Mexico) noted that international migrations were not new; as history had shown, they had often been decisive factors in the development of certain countries which included some of the most industrialized. However, those very countries were now adopting an extremely restrictive policy towards migrant workers, who now numbered nearly 100 million, or 2 per cent of the world's population. They constituted a particularly vulnerable group and deserved the attention of the international community. That was why the Mexican Government continued to support the world campaign in favour of the ratification and entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and had welcomed the establishment, in 1997, of a Working Group of the Commission on Human Rights to study the situation of migrants and ways to strengthen and protect their human rights more effectively. He noted with appreciation that nearly 60 countries had provided frank and honest replies to the questionnaire which the Group had sent them requesting information on the extent of migration and the violations to which migrants were exposed; that revealed the international community's keen interest in the issue.

41. Other initiatives had also been taken at the regional level. On 17 July 1998, the Third Summit Meeting of Heads of State and of Government had been held in El Salvador on the Tuxtla mechanism for dialogue and cooperation; the theme had been the development of international cooperation to ensure the full observance of migrants' human rights in efforts to resolve the problems raised by migration. The President of Mexico had announced a series of measures to facilitate the procedure to be complied with by migrants in regularizing their situation, as part of the Mexican Government's ongoing efforts to find realistic, long-term solutions to migrants' problems. The Government had in particular stepped up its consultations with Canada and the United States and had signed agreements with the United States establishing regulations governing expulsion procedures for migrants. A recently-enacted law permitted Mexicans who had emigrated to acquire another nationality without losing their Mexican nationality, and better to protect their rights in the countries where they settled.

42. The problem of international migrations would certainly not be solved solely through repression, with its negative consequences. For that reason Mexico advocated shared responsibility between nations and concerted action by all countries. It was important to establish mechanisms which helped to promote a culture of respect for the human rights of migrants through recognition of their contribution to the societies in which they lived. Thus Mexico awaited the recommendations of the Commission's Working Group with interest and would continue to participate actively in its work.

43. Mr. CHOWDHURY (Observer for Bangladesh) said that he was deeply concerned by the increasingly frequent acts of discrimination against foreigners in host countries and migrant workers in particular. Xenophobia, racism and prejudice, if deeply rooted in a society, could not be overcome by legislation alone. Education and the media must teach tolerance and respect for difference. Mechanisms must also be introduced to protect the rights of migrant workers, who constituted a particularly vulnerable group of society, especially those in illegal situations.

44. Women, and increasingly children, were "easy" victims of trafficking by unscrupulous individuals. The countries of South Asia, aware of that problem, were drafting a regional convention to combat it, under the auspices of the South Asian Association for Regional Cooperation.

45. The entire international community must defend the rights of migrant workers, notably through the Commission's Working Group and the preparation of the World Conference against Racism. In conclusion, he was pleased to inform the Sub-Commission that his country would shortly be ratifying six key international human rights instruments, including the International Convention on the Protection of All Migrant Workers and Members of Their Families.

46. Mr. WEISSBRODT referred to a letter dated 19 March 1997 (E/CN.4/Sub.2/1997/31), in which Mr. Banton, then Chairman of the Committee on the Elimination of Racial Discrimination, had proposed several topics for the Sub-Commission to study, including the advisability of referring to definitions of the terms "race" and "racism" in texts prohibiting racism and its implications, the rights of non-citizens and affirmative action. Mr. Bossuyt had produced a working paper on the concept of affirmative action (E/CN.4/Sub.2/1998/5), and he would subsequently propose that the Sub-Commission should assign Mr. Bossuyt, as Special Rapporteur, the task of preparing a study on that topic.

47. The elimination of the term "race" from international human rights instruments and national legislation would be premature, counter-productive and irresponsible. The objective of totally eradicating race-based social, economic and political stratification had yet to be achieved. Data and indicators, disaggregated along racial and ethnic lines, were needed to assess the progress achieved by States in combating racial discrimination and the effectiveness of national and international mechanisms designed to eliminate it.

48. With regard to the rights of non-citizens, the Chairman of the Committee on the Elimination of Racial Discrimination had noted in the above-mentioned letter that the distinctions increasingly made between various categories of non-citizens might amount to total exclusion of persons, depriving them of the most fundamental rights. In his view distinctions between non-citizens and citizens violated the principles of equality and non-discrimination embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights. Further information on the violation of the rights of non-citizens could be found in the study by Baroness Elles on the protection of the human rights of non-citizens (E/CN.4/Sub.2/392/Rev.1), which had led to the General Assembly's adoption in 1985 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, the report of the Seminar on Immigration, Racism and Racial Discrimination (May 1997) (E/CN.4/Sub.2/77/Add.1), Mr. Eide's study on the achievements made and obstacles encountered during the Decades for Action to Combat Racism and Racial Discrimination and General Comment 15 of the Human Rights Committee, entitled "The position of aliens under the Covenant" (HRI/GEN/1/Rev.3), in which the Committee noted that reports from States parties often failed to take into account that each State party must ensure the rights in the Covenant to all individuals within its territory and subject to its jurisdiction.

49. He suggested that the Sub-Commission should ask one of its members to produce a preparatory document on the feasibility of a study on the rights of non-citizens, without financial implications, for consideration by the Sub-Commission in 1999.

50. Ms. HAMPSON said any study which the Commission decided to conduct on the rights of non-citizens should include the issue of double nationality. Migrant workers who were long-standing legal residents of their host country, as well as their children, should be able to acquire the nationality of that country and enjoy all related rights. The study should also include the situation of migrant workers whose State of origin revoked their nationality when they acquired the nationality of the host country. In other situations, double nationality made it possible to avoid tension between the host country and the country of origin.

51. Mr. EIDE endorsed the views expressed by Mr. Weissbrodt and Ms. Hampson. States' obligations under international law with regard to the granting of nationality should also be spelled out. In that context, account should be taken of the work of the International Law Commission on the problem of nationality in relation to the succession of States, the European Convention on Nationality recently adopted by the Council of Europe, which was relatively progressive, and certain relevant inter-American instruments.

52. Article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination, which authorized States parties to make distinctions between citizens and non-citizens, should be brought into perspective and States parties reminded that, in acceding to instruments of such importance as the International Covenant on Civil and Political Rights and the European Convention on Human Rights, they pledged to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in those instruments, whatever their nationality.

53. Mr. Guissé resumed the Chair.

54. Mr. JOINET noted that article 6 of the Universal Declaration of Human Rights stipulated that everyone had the right to recognition everywhere as a person before the law. Nationality was an integral and very important feature of legal personality. A study of the rights of non-citizens should therefore determine what criteria of international law would make it possible to fill gaps in domestic law or bring domestic law into line with international instruments.

55. Mr. KARTASHKIN said that all the questions raised, in particular the issue of double nationality, could be tackled in a study entitled, "The rights of individuals who are not nationals of the country in which they live".

56. Mrs. WARZAZI said she was not very clear why the Sub-Commission should undertake a study entitled "The rights of individuals who are not nationals of the country in which they live", since there was already a Declaration with exactly the same title, on which the Sub-Commission had worked for many years. She noted that the Western countries had done everything they could to limit the scope of the Declaration, for fear that it would influence the draft

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which had also been under preparation at the time. On that point, if the Convention was ever to be implemented, the employment-providing States would have to be asked to ratify it. She proposed the following title for the study of the human rights of non-citizens: "The potential benefits of double nationality for the elimination of discrimination against non-citizens".

57. She welcomed the fact that the proposal of the Chairman of the Committee on the Elimination of Racial Discrimination, to the effect that references to race should be removed from national and international legal texts, had not been accepted.

58. Mr. WEISSBRODT thanked members of the Sub-Commission for their statements, which had helped him grasp the complexity of the question of the rights of non-citizens. He would give them due consideration before making another proposal for a working paper on the issue.

59. Mr. EIDE said that much had happened since the adoption of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, and new situations had to be taken into account. The Working Group on Minorities had decided to prepare a working paper on the very complex question of nationality and minorities. It was obvious that members would have to hold consultations in order to decide what kind of study should be undertaken.

The meeting rose at 1 p.m.